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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,061	07/25/2003	Palani Raj Ramaswami Wallajapet	13.638.2	2215

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KIMBERLY-CLARK WORLDWIDE, INC.
401 NORTH LAKE STREET
NEENAH, WI 54956

EXAMINER

YOON, TAE H

ART UNIT PAPER NUMBER

1714

DATE MAILED: 02/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/627,061

Applicant(s)

WALLAJAPET ET AL

Examiner

Tae H. Yoon

Art Unit

1714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 65-79 and 81-92 is/are pending in the application.
- 4a) Of the above claim(s) 65-68 and 81-92 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 69-79 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Note new examiner.

Applicant's election with traverse of Group V (claims 70-74 and 76-79) in the reply filed on Jan. 06, 2005 is acknowledged. The traversal is on the ground(s) that inventions of different groups are related and that examiner failed to teach such groups are independent or distinct. This is not found persuasive because the component b of claim 65 (a polymeric basic material that is not water-swellaable and water-insoluble), claim 69 (a non-polymeric basic material), claim 81 (a polymeric acidic material that is not water-swellaable and water-insoluble) and claim 85 (a non-polymeric acidic material) is distinct each other and thus they make the absorbent structure distinct at least. However, the examiner would modify the restriction requirement as group I (claims 65-68), group II (claims 69-74), group III (claims 81-84) and group IV (claims 85-92) with claims 75-79 being dependent on groups I and II. Thus, claims 69-79 are examined since applicant elected claims 70-74 and 76-79 and the examination of claim 65 is not warranted contrary to applicant's assertion. For example, a combination of claims 69 and 75 will be examined, for example, and not claims 65 and 75.

The requirement is still deemed proper and is therefore made FINAL.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double

Art Unit: 1714

patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 69-79 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1-15 of U.S. Patent No. 6,639,120. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instantly recited "(the absorbent structure) comprising" permits the presence of other component such a buffering agent of said patent.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 70 and 76 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims recite "--- comprises A, B, --- and Z" and thus a component comprises all of the recited species. However, it should be one specie, and thus claims are confusing. Replacement "and" with "or" is suggested.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 1714

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 69, 70 and 73-79 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over WO 96/17681 (Palumbo).

WO teaches an absorbent material comprising an anionic superabsorbent having 20-100 % of free acid groups and a cationic superabsorbent having 20-100 % of basic groups useful in diapers in abstract and at page 1, lines 23-24. Said cationic superabsorbent contains any suitable anion such as carbonate or citrate (page 8, line 34 to page 9, line 3). The instant acidic polymers are taught at the bottom of page 6, and a molar ratio of 3:1 to 1:5 for said anionic superabsorbent and cationic superabsorbent is taught at page 11, line 12. The instant Wicking capacity, 56 g/g, is taught in table of page 15. Even though, WO does not state an absorbent structure having an upper surface, it would be an inherent practice of WO since WO teaches diapers and since said diapers have outer surfaces including an upper surface. Said upper surface of a diaper having an absorbent material inherently would exhibit a pH of 3 to 8 since such pH is controlled by an absorbent material underneath and WO teaches the same material.

Thus, the instant invention lacks novelty.

Claims 69, 70 and 73-79 are rejected under 35 U.S.C. 103(a) as obvious over WO 96/17681 (Palumbo) and McOske et al (US 2002/0147433 A1).

Said upper surface of a diaper having absorbent material a natural acidic state such as a pH of 4.0 to 6.0 in order to avoid a diaper rash of a wearer's (baby) skin is well known as taught by McOske et al, [0008].

Thus, it would have been obvious to one skilled in the art at the time of invention to make the instant absorbent structure exhibiting a pH on the upper surface with an absorbent of WO and McOske et al since the absorbent structure having the upper surface is well known as taught by McOske et al and since McOske et al teach a natural acidic state of the upper surface contacting skin.

Claims 69, 70 and 72-79 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Siddall et al (US 4,833,222).

Siddall et al teach a partially neutralized absorbent material having 5-80% of free acid groups with sodium carbonate and its use in disposable baby diapers at col. 1, lines 9-14 and col. 7, lines 31-52. Said partially neutralized absorbent material having 80% of free acid groups inherently meets the instant molar ratio of claim 77 and said absorbent material has Wicking capacity of 20-70 g/g (col. 9, lines 5-15). The use of a partially crosslinked polyacrylic acid having the instant pKa inherently is seen in examples 1-3. Even though, Siddall et al do not state an absorbent structure having an

Art Unit: 1714

upper surface, it would be an inherent practice of Siddall et al since Siddall et al teach diapers and since said diapers have outer surfaces including an upper surface. Said upper surface of a diaper having absorbent material Siddall et al inherently would exhibit a pH of 3-8 since such pH is controlled by an absorbent material underneath and Siddall et al teach the same material.

Thus, the instant invention lacks novelty.

Claims 69-79 are rejected under 35 U.S.C. 103(a) as obvious over Siddall et al (US 4,833,222) in view of McOske et al (US 2002/0147433 A1) and further in view of Beyer et al (US 2002/0058097 A1).

The instant invention further recites sodium citrate over Siddall et al. However, the use of such basic material with an absorbent material is well known in the art as taught by Beyer et al, [0030] wherein a combination of sodium citrate and sodium carbonate is seen. Said upper surface of a diaper having absorbent material a natural acidic state such as a pH of 4.0 to 6.0 in order to avoid a diaper rash of a wearer's (baby) skin is well known as taught by McOske et al, [0008].

Thus, it would have been obvious to one skilled in the art at the time of invention to make the instant absorbent structure exhibiting a pH on the upper surface with an absorbent of Siddall et al and McOske et al since the absorbent structure having the upper surface is well known as taught by McOske et al and since McOske et al teach a natural acidic state of the upper surface contacting skin, and further to utilize sodium

Art Unit: 1714

citrate of Beyer et al in Siddall et al since the use of sodium citrate as a basic buffering component is a routine practice as taught by Beyer et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tae H. Yoon whose telephone number is (571) 272-1128. The examiner can normally be reached on Mon-Thu.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tae H Yoon
Primary Examiner
Art Unit 1714

THY/February 9, 2005